

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LUIS ALBERTO RIOS,

Petitioner,

v.

No. 13-cv-0445 JCH/SMV

JAMES JANECKA and GARY KING,

Respondents.¹

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 12] ("PF&RD"), issued October 24, 2013. On September 19, 2013, Petitioner² elected to withdraw his unexhausted claims and proceed on his sole exhausted claim: that his lawyer was ineffective for failing to raise Petitioner's competency to stand trial prior to Petitioner's entering into a plea agreement. [Doc. 9]. On reference by the undersigned, the Honorable Stephan M. Vidmar, United States Magistrate Judge, found that Petitioner failed to show how the prejudice prong under *Strickland v. Washington*, 466 U.S. 668, 687 (1984), was satisfied. [Doc. 12] at 8. Judge Vidmar further found that Petitioner had not shown that the state court decision dismissing Petitioner's state habeas petition was "contrary to, or involved an unreasonable application of, clearly established Federal law" or "was based on an unreasonable determination of the facts in light of the evidence presented," as required by 28 U.S.C. § 2254(d). *Id.* Accordingly, Judge Vidmar recommended denying the Petition [Doc. 1] and dismissing the action with prejudice. [Doc. 12] at 1. Finally, Judge Vidmar recommended

¹ The Petition [Doc. 1] originally named Paddy Downey and Gary King as Respondents. By the Court's Order to Substitute Party . . . [Doc. 6] (filed May 28, 2013), Downey was substituted with James Janecka as Respondent.

² Petitioner has been represented by counsel throughout the proceedings before this Court.

denying Petitioner's request for an evidentiary hearing because his claim was adjudicated on the merits by the state courts. [Doc. 12] at 1 (citing *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398–99 (2011)). No party has filed objections to the PF&RD, and the time for objecting has passed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 12] are **ADOPTED**.

IT IS FURTHER ORDERED that Petitioner's Petition [Doc. 1] is **DENIED**, and this case is **DISMISSED with prejudice**

IT IS SO ORDERED.



JUDITH C. HERRERA
United States District Judge